

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-4925

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATSY EBERECHUKUH OFORHA,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (CR-97-20)

Submitted: June 15, 1999

Decided: August 19, 1999

Before ERVIN and WILKINS, Circuit Judges, and HALL,* Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

James Wyda, Federal Public Defender, Denise C. Barrett, Assistant Federal Public Defender, Baltimore, Maryland, for Appellant. Lynne A. Battaglia, United States Attorney, Barbara S. Sale, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

* Senior Judge Hall was assigned to the panel for this case but died prior to the time the decision was filed. The decision is filed by a quorum of the panel. 28 U.S.C. § 46(d).

PER CURIAM:

A jury convicted Appellant Patsy Oforha of several charges involving food stamp fraud based on his conduct as a clerk in a small convenience store. Oforha was convicted of one count of conspiracy to defraud the United States in violation of 18 U.S.C.A. § 371 (West Supp. 1999), and eleven counts of unauthorized use of food stamps and aiding and abetting thereof in violation of 7 U.S.C. § 2024(b) (1994), 18 U.S.C. § 2 (1994). On appeal, Oforha contends that the district court's conscious avoidance instruction was plain error. We affirm.

Because Oforha failed to object to the challenged jury instruction, this Court reviews for plain error. See United States v. Olano, 507 U.S. 725, 731-32 (1993). We find that the evidence supported the instruction and it was proper because it focused on whether Oforha had knowledge of the conspiracy's unlawful purpose, not whether Oforha had joined the conspiracy. See United States v. Eltayib, 88 F.3d 157, 170-71 (2d Cir. 1996).

Accordingly, we affirm Oforha's convictions and sentences. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

AFFIRMED